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7 UNITED STATES DISTRICT COURT FOR THE
8 WESTERN DISTRICT OF WASHINGTON
9 AT SEATTLE

10 UNITED STATES OF AMERICA,

11 Plaintiff,

12 v.

13 BRIAN KEVIN RUBENAKER,

14 Defendant.
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No. CR19-002-RSM

**PRELIMINARY
ORDER OF FORFEITURE**

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18 THIS MATTER comes before the Court on the United States' Motion for Entry of
19 a Preliminary Order of Forfeiture ("Motion") seeking to forfeit, to the United States, the
20 Defendant Brian Kevin Rubenaker's interest in the following property that was seized
21 from him, by U.S. Probation, on or about October 17, 2018 in Everett, Washington:

- 22 1. A Dell E5450 laptop computer; and,
23 2. Any and all images of child pornography, in whatever format and however
24 stored.

25 The Court, having reviewed the United States' Motion, as well as the other papers
26 and pleadings filed in this matter, hereby FINDS entry of a Preliminary Order of
27 Forfeiture is appropriate because:
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- The above-identified property is forfeitable pursuant to 18 U.S.C. § 2253, as it is comprised either of prohibited images or property used to commit or to promote the commission of the offense of Access with Intent to View Child Pornography, in violation of 18 U.S.C. § 2252(a)(4)(B); and,
- Pursuant to the plea agreement he entered on January 8, 2019, the Defendant agreed to forfeit the above-identified property pursuant to 18 U.S.C. § 2253 (Dkt. No. 42, ¶ 8).

NOW, THEREFORE, THE COURT ORDERS:

1) Pursuant to 18 U.S.C § 2253 and his plea agreement, the Defendant's interest in the above-identified property is fully and finally forfeited, in its entirety, to the United States;

2) Pursuant to Fed. R. Crim. P. 32.2(b)(4)(A)-(B), this Preliminary Order will be final as to the Defendant at the time he is sentenced; it will be made part of the sentence; and, it will be included in the judgment;

3) The United States Department of Homeland Security, Homeland Security Investigations ("HSI"), and/or its authorized agents or representatives, shall maintain the laptop computer (item 1) in its custody and control until further order of this Court. HSI shall destroy any child pornography (item 2) unless it has been destroyed already or will be retained for official, investigative use, as permitted by 21 U.S.C. §§ 853(i) and 881(e);

4) Pursuant to Fed. R. Crim. P. 32.2(b)(6) and 21 U.S.C. § 853(n), the United States shall publish notice of this Preliminary Order and the United States' intent to dispose of the laptop as permitted by governing law. The notice shall be posted on an official government website – currently www.forfeiture.gov – for at least thirty (30) days. For any person known to have alleged an interest in the laptop, the United States shall, to the extent possible, also provide direct written notice to that person. The notice shall state that any person, other than Defendant, who has or claims a legal interest in the laptop must file a petition with the Court within sixty (60) days of the first day of publication of

1 the notice (which is thirty (30) days from the last day of publication), or within thirty (30)
2 days of receipt of direct written notice, whichever is earlier. The notice shall advise all
3 interested persons that the petition:

- 4 a. shall be for a hearing to adjudicate the validity of the petitioner's alleged
5 interest in the laptop;
- 6 b. shall be signed by the petitioner under penalty of perjury; and,
- 7 c. shall set forth the nature and extent of the petitioner's right, title or interest
8 in the laptop, as well as any facts supporting the petitioner's claim and the
9 specific relief sought.

9 5) If no third-party petition is filed within the allowable time period, the
10 United States shall have clear title to the laptop, and this Preliminary Order shall become
11 the Final Order of Forfeiture as provided by Fed. R. Crim. P. 32.2(c)(2);

12 6) If a third-party petition is filed, upon a showing that discovery is necessary to
13 resolve factual issues it presents, discovery may be conducted in accord with the Federal
14 Rules of Civil Procedure before any hearing on the petition is held. Following
15 adjudication of any third-party petitions, the Court will enter a Final Order of Forfeiture,
16 pursuant to Fed. R. Crim. P. 32.2(c)(2) and 21 U.S.C. § 853(n), reflecting that
17 adjudication; and,

18 7) The Court will retain jurisdiction for the purpose of enforcing this
19 Preliminary Order, adjudicating any third-party petitions, entering a Final Order of
20 Forfeiture, and amending the Preliminary Order or Final Order as necessary pursuant to
21 Fed. R. Crim. P. 32.2(e).

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2 IT IS SO ORDERED

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4 DATED this 2nd day of April, 2019.

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8 RICARDO S. MARTINEZ
9 UNITED STATES DISTRICT JUDGE

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13 Presented by:

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16 s/ Michele Jensen

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